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Martin Jones
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Submitted via email to: martinjones@fs.fed.us

July 1, 2019

Re: Scoping Comments for the Proposed Blanco Creek Exploration, Small NEPA Projects Proposal (July 2, 2019 Scoping Notice)

Dear Mr. Jones:

Thank you for considering our scoping comments for the proposed Blanco Creek Exploration project. Since 1973, the Idaho Conservation League (ICL) has worked to protect and enhance Idaho's clean water, wilderness, and quality of life through citizen action, public education, and professional advocacy. The Idaho Conservation League has a long history of involvement with mining, and as Idaho's largest statewide conservation organization, ICL represents over 30,000 supporters who have a deep personal interest in ensuring that mining operations are protective of our land, water, fish, and wildlife.

We appreciate the Forest Service's efforts to streamline and increase project evaluation efficiency by using the Small NEPA Projects program. However, ICL believes the proposed Blanco Creek Exploration project contains significant issues that warrant more complete environmental evaluations. We are concerned about categorically excluding these types of operations from further environmental review and strongly recommend that the minimal evaluation level the Forest Service conducts is an Environmental Assessment (EA). More specific comments regarding these projects are found below.

Once again, thank you for the opportunity to provide scoping comments regarding these three proposals. Please keep ICL on the mailing list for all documents related to each project. We look forward to the opportunity to work with the Nez Perce-Clearwater National Forest on this, and any future projects.

Respectfully,

A handwritten signature in black ink, appearing to read 'Josh Johnson', with a stylized, flowing script.

Josh Johnson
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Idaho Conservation League's Scoping Comments for the Proposed Blanco Creek Exploration Project

National Environmental Policy Act

The National Environmental Policy Act requires federal agencies to disclose the effects of mining operations to the human and natural environment, including the cumulative effects of all past, present and reasonably foreseeable future actions.

The combined cumulative effects of all prospecting and mining operations in the vicinity must be disclosed in the environmental analysis. Any other known past, present and reasonably foreseeable future actions should also be disclosed as well as the effects of those activities to the environment when combined with prospecting and mining. These guidelines are especially applicable to the Blanco Creek project as the area incorporates the Hercules, Pasadena, and Alberta mines, historic mining operations that contribute to documenting the legacy mining history of the region.

The Forest Service must also evaluate alternatives to the proposed action and the plan of operations. The Forest Service must rigorously and objectively explore the no action alternative in the event that the operator either cannot prove that the applicable claims are valid or the operator cannot meet the requirements of all applicable laws and regulations.

Additional action alternatives should also be explored, particularly with regard to bonding, reclamation, the scale of the mining operations and the timeframe (life) of the operations. After all, the Forest Service must ensure that “[a]ll operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources.” 36 C.F.R. § 228.8. The only constraint on the Forest Service’s duty to minimize is that such minimization measures must be “feasible.” 36 CFR § 228.8. There are no laws or regulations that preclude the agency from requiring further mitigation and minimization measures because such measures are financially impractical under the operator’s current financial situation. “Virtually all forms of Forest Service regulation of mining claims – for instance, limiting the permissible methods of mining and prospecting in order to reduce incidental environmental damage – will result in increased operating costs, and thereby will claim validity.” *Clouser*, 42 F.3d at 1530. Consideration and analysis of a reasonable range of alternatives forms the basis for informed-decision making.

“Category 8” Concerns

The potential cumulative impacts and the use of the categorical exclusion (CE) set forth in 36 C.F.R. § 220.6(e)(8) (“Category 8”) represent a significant concern for ICL. Category 8 exempts certain short-term mineral investigations and incidental support activities, among other activities, from undergoing full review under NEPA. We believe that it is improper for the Forest Service to approve these projects using Category 8, and must at a minimum prepare an EA.

Firstly, we question whether agency can utilize Category 8 for the proposed Blanco Creek Exploration project based on potential and likely effects to ESA-listed species, RHCAs, sensitive soils and other concerns. As the Ninth Circuit has held, an agency’s decision to establish a category of actions that are excluded from full NEPA review can only be made with a full

understanding of the significance of the impacts resulting from application of the category. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1027 (9th Cir. 2007) (“The Forest Service must perform this impacts analysis prior to promulgation of the CE.”). Of particular importance, “the Forest Service must perform a programmatic cumulative impacts analysis for the . . . CE.” *Id.* at 1029. In *Bosworth*, the Ninth Circuit invalidated the Forest Service's reliance on a categorical exclusion that was promulgated without a complete analysis of cumulative and other impacts. The Court then enjoined projects approved pursuant to that categorical exclusion. *Id.* at 1026-1030. The same legal rule applies to the agency's failure to comply with the procedural and substantive requirements of the ESA.

The Ninth Circuit held that the Forest Service violated these requirements in adopting the 2003 Hazardous Fuels CE in *Bosworth*, because the agency failed to assess the cumulative impacts from future projects to be approved under the CE. As the court explained:

Relying solely on a project level analysis is inadequate because it fails to consider impacts from past, present, or reasonably foreseeable Fuels CE projects which may be located in close proximity, in the same watershed or endangered species habitat.

Bosworth, 510 F.3d at 1027. Moreover, the Ninth Circuit emphasized that cumulative impacts analysis “is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres.” *Id.*, at 1028.

The same is true in the case of Category 8. The Forest Service never performed a direct, indirect or cumulative impacts analysis (or any of the required ESA consultation and analysis) on Category 8 -- routine, short-term mining investigations and their incidental support activities -- and the related provisions in Chapter 30 of the Forest Service Handbook regarding extraordinary circumstances. As a result, impacts at the local, forest, state, and regional level from the mineral investigation activities authorized or covered by Chapter 30 and Category 8 were never evaluated. As in *Bosworth*, the Forest Service never reviewed the significance factors required by NEPA in assessing whether its action - adopting a categorical exclusion and the extraordinary circumstances provision - may have significant impacts. Accordingly, because adoption of Category 8 and Chapter 30 violated NEPA and the ESA, the Forest cannot rely upon on those provisions for the approval of the proposed exploration projects.

Not only must the Forest Service consider the cumulative impacts of these three projects currently being considered for approval under Category 8, but also consider the impacts of all projects previously approved using Category 8 that have relevant cumulative impacts. Furthermore, the Forest Servicer must review any other past, present, or reasonably foreseeable impacts in the cumulative impacts analysis for these projects, including but not limited to: road construction, timber management, mineral exploration and development, livestock management, travel management, wildfire, prescribed fire, or other activities.

Travel Analysis

While ICL supports using established roads whenever possible for all public lands projects, the absence of information relating to the Blanco Creek project indicates that the Forest Service must complete a travel analysis report at the appropriate scale as required by recently released

direction contained in the Forest Service Manual and Handbook. The travel analysis report should identify options for road designation, closure or decommissioning to minimize impacts to national forest resources.

A close examination of the travel and access plans for the proposed Blanco Creek Exploration project bolsters the need for a thorough travel analysis, and highlights the fact that the project should not be considered a categorical exclusion. The scoping notice describes project access through Forest Service roads and prior logging roads, specifically FSR 423 and 423A.

According to the Project Vicinity map, 423A is a designated trail; however, neither the map nor the scoping notice describes the nature of the trail, such as four-wheel drive or non-motorized. The plan also proposes to either clear trees and other vegetation from 0.5 miles of FSR 423A (also referred to as Access Road A), or to alternatively use 0.65 miles of an old logging road designated Access Road B. Access roads A and B merge with the logging road that provides direct access to the majority of the drill pad sites (two are located off the east end of FSR 423A). While moderate to minimal rehabilitation or tree removal is required for both access roads, there is no mention of the current condition, required condition for use, or any proposed action related to the rehabilitation or use of the logging road. Based on the reported conditions of roads within the Forest Service system, ICL finds it unlikely that no work would be required along the logging road. Finally, two new temporary roads are also proposed for the direct access to the two primary drilling locales.

If additional work were required for the logging road, the total miles encompassed by the POO would exceed the "less than 1 mile of low standard road" guideline for the use of a Section 8 CE. Therefore, should the Forest Service proceed with project approval as presented, it would be in violation of NEPA and any subsequent work performed under the project agreement would result in an illegal taking and use of public lands. ICL recommends the Forest Service re-issue a scoping notice for the project with more complete information regarding project area access, road conditions, the cumulative effects of traveling on FS roads during the course of the project, and the potential environmental effects resulting from increased use, maintenance, and rehabilitation. This should include all roads within the Forest Service system used during the lifetime of the proposed project.

Threatened and Endangered Species

The Forest Service must submit a biological assessment on all possible threats to listed species and the USFWS and NMFS must approve the report with a "no jeopardy" finding. No incidental take permit should be allowed. Although the Blanco Creek Exploration project is located within established Snake River steelhead, Chinook salmon, and Bull trout habitat, the scoping notice fails to address an actual habitat assessment of the project area in relation to these and other sensitive species. While pumping activities would require a 1/8" screen over the pump intake hoses (a requirement ICL wholeheartedly supports), the Forest Service makes no effort to address the project's potential adverse effects to water temperature, remaining in-stream quantities, or the amount of water that will be required (or estimated) for drilling a single hole, let alone the proposed 20 holes (10 test, 10 sump). Finally, the project operator's propose the install a culvert where the logging road crosses an unnamed creek. While ICL applauds the effort to reduce sedimentation and erosion caused by vehicles crossing the small drainage, the absence of information regarding the nature and

extent of the unnamed creek represents a more significant cause for concern.

Water Rights

If an operator plans to withdrawal or divert water for their operation, a water right must be sought and obtained from the Idaho Department of Water Resources. The Forest Service should require proof that a water right has been obtained from the Idaho Department of Water Resources *prior* to approving any plan of operations, or initiating any ground-disturbing activities. The timing of water withdrawal should be defined to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species. A water right is necessary regardless if processing takes place on or off of federal lands.

Riparian Habitat and Conservation Area Protection

All operations must comply with the protective standards and regulations of INFISH, concerning mining, road construction, and tree removal. No Forest Plan amendments to suspend these requirements should be considered.

If any discharge from mining activities is anticipated to occur, effects to sensitive, threatened, and endangered species represents an extraordinary circumstance, justifying the preparation of an environmental assessment (EA) or environmental impact statement (EIS). The project analysis and decision document for any project within RHCA's should articulate project design features that demonstrate consistency with the Riparian Management Objectives contained in the INFISH and how they will be maintained and restored following project implementation.

Hazardous Materials

Because machinery will be used to transport materials and equipment to the proposed project areas, a hazardous material plan needs to be in place in the event of a fuel or solvent leak. Hazardous wastes, including grease, oil, and fuels, need to be disposed of off-site in an environmentally appropriate manner. All fuel storage should be greater than 300' from live water. We are especially concerned about the use of fuels, lubricants, solvents, and other toxic chemicals in or around streams and drainages. The use of these hazardous materials must be carefully evaluated and an approved spill containment kit should be on-site at all times. Secondary containment systems should be in place.

Noxious Weeds

Vehicles and equipment serve as vectors for the spread of noxious weeds when proper inspection and cleaning are not practiced to limit their spread. Disturbed soil needs to be stabilized to prevent erosion and expansion of noxious weeds. All equipment should be inspected, cleaned, and washed prior to the operator entering public lands. Work crews trained in noxious weed recognition and removal should patrol the project area and mechanically remove any weeds or microtrash.

Fire Prevention

With the proposed activities taking place during mid-summer, there will be an increased risk of wildfire. There must be an approved fire plan and emergency equipment accessible during operations. Inspector-certified fire extinguishers should be placed in all vehicles. Handheld implements (shovels or axes) should be accessible at all operating locations, and evacuation plans should be in place for all project areas.

Reclamation and Bonding

Forest Service regulations at 36 CFR § 228 require the Forest Service to establish an adequate reclamation bond for mining operations. Bonding costs need to be detailed in the environmental analysis for each alternative.

The bond must be substantive enough to cover the worst possible impacts to the human and natural environment and at a minimum, take into consideration:

- Possible spills of fuels and other hazardous materials
- Impacts to the ecosystem
- Road decommissioning
- Mine drainage treatment in perpetuity
- Monitoring

Bonding costs should be calculated according to Forest Service pricing, including the cost of renting and transporting equipment and wages for all workers and supervisors. Alternatively, a third-party contracted by the Forest Service could calculate the bonding costs. In any event, the operator should not calculate the bonding costs.

The environmental analysis needs to describe the reclamation process and all associated costs in detail. This analysis should include the volume and type of material to be moved, equipment needed, location for stockpiling, and sequence for reclamation. To the extent practical, reclamation activities should take place concurrently with the mining operation.